

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

JOHN ZIZZO

Respondent.

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Docket No. 12-3871-DB(S)

SUSPENDING OFFICIAL'S DETERMINATION

Introduction and Background

By Notice of Suspension dated March 22, 2012 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent JOHN ZIZZO of his immediate suspension from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. The Notice further advised Respondent that his suspension was in accordance with the procedures set forth in 2 CFR parts 180 and 2424.

Additionally, Respondent was advised that his suspension is based upon an indictment filed in the United States District Court for the Eastern District of New York charging him with violation of 18 U.S.C. § 1349 (Attempt and Conspiracy). The Notice further informed Respondent that he was specifically accused of having participated in schemes to defraud the Federal Housing Administration (FHA). The Notice advised Respondent that the indictment constitutes adequate evidence on which to base his suspension under 2 C.F.R. §§ 180.700 and 180.705. The Notice added that, based on the allegations in the indictment, the Government faces a serious and immediate risk of harm if Respondent is permitted to continue doing business with the Government; thus, Respondent's immediate suspension is necessary to protect the public interest. Additionally, Respondent was advised that his suspension was for a temporary period pending the outcome of the criminal proceedings and any related debarment action.

A telephonic hearing was held on June 26, 2012, before the Suspending Official's Designee, Mortimer F. Coward. Respondent was not present, but was represented by his attorney, Glenn A. Obedin, Esq. Joseph Kim, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 C.F.R. part 180, to affirm and to continue Respondent's suspension from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Suspension dated May 22, 2012.
2. A letter dated April 5, 2012, from Respondent's attorney, addressed to the Director of the Compliance Division requesting a hearing.
3. The Government's Brief in Support of Suspension, filed May 24, 2012 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Counsel recites that Respondent, a loan officer with an FHA-approved Direct Endorsement lender, was indicted in October 2011 for conspiracy to commit wire fraud. The indictment alleged, as summarized by counsel, that Respondent and his co-conspirator defrauded FHA by fraudulently inflating the purchase price of certain real estate and by submitting mortgage applications and supporting documentation that contained false information concerning the true identity of the buyers and the income, assets, and employment status of these straw buyers. Respondent acted as the loan officer, and prepared and submitted the loan applications for the straw buyers. Respondent also bribed a fellow employee to confirm the false information in the loan applications regarding the straw buyers' employment. After settlement, a portion of the loan proceeds was remitted to Respondent for his role in the scheme. Some of the buyers defaulted on their mortgage loan, resulting in foreclosure on the loans. The payment information regarding three of these properties, as shown in the indictment, records a history of defaults beginning soon after closing of their respective loans and the resulting commencement of foreclosure proceedings. Counsel notes that Respondent, at the time of his arraignment, was employed with another mortgage company.

Counsel argues that, based on the indictment, there is adequate evidence for Respondent's suspension and the action taken was "necessary to protect the public interest." *See* 2 C.F.R. § 180.700. Counsel supports his position by arguing, first, that Respondent is subject to suspension because he has been a participant and principal in a covered transaction. *See* 2 C.F.R. §§ 180.200 and 980. Respondent was a participant because he acted as an agent of an FHA-approved lender, preparing and submitting applications for FHA-insured loans. By submitting applications for FHA-insured loans, Respondent submitted proposals in a covered transaction. Also, as an agent of a HUD-approved lender, which was engaged in covered transactions by virtue of the lender's approving FHA-insured loans, Respondent is a participant under 2 C.F.R. § 180.980. Respondent is also a principal, a term that includes loan officers, as defined in 2 C.F.R. § 2424.995(a). *See also* 2 C.F.R. § 180.995.

Respondent's conduct in the conspiracy, as detailed in the indictment, counsel asserts, "indicates a grave lack of business integrity or business honesty sufficient to compel immediate action to protect the public interest," stressing that the "Government can reasonably infer from the indictment that there is reason to believe that Respondent lacks responsibility." (Citation omitted) In this regard, counsel also points out that Respondent is currently employed by another mortgage company, thus he may "reasonably be expected to be involved in FHA mortgage transactions." Consequently, to ensure that Respondent "does not further violate HUD programs or compromise their integrity," HUD had to take immediate action to protect the public interest by suspending business dealings with Respondent.

Counsel states that the reasons put forth by Respondent to avoid his exclusion do not mitigate the need for his suspension. Counsel finds unpersuasive Respondent's argument that, prior to the wrongdoing for which he was indicted, he had a "flawless work record." As counsel sees it, Respondent's wrongdoing was not limited to one isolated incident but to a criminal enterprise that lasted eight months. Counsel also dismisses Respondent's protestations of innocence in his criminal case as "irrelevant in a suspension proceeding." Counsel also adds that "the standard for the issuance of a suspension is not" a respondent's guilt or innocence, but whether there is adequate evidence on which to base a suspension and the need to protect the public interest. Further, counsel rejects Respondent's argument that, because the court in Respondent's criminal matter did not prohibit him from continuing to work in the mortgage industry, Respondent can be considered presently responsible. There is a difference in the purpose served by the debarment and suspension regime as opposed to the criminal justice system, counsel notes. The former is not intended to exact punishment as in the criminal process, but to protect "governmental interest not safeguarded by other laws." (Citation omitted.)

Respondent's Arguments

Counsel for Respondent argues that Respondent's suspension is not mandatory, nor is immediate action to protect the public interest necessary. Respondent, according to counsel, has been working in the mortgage industry since 1988, "has a flawless work record" and the misconduct for which Respondent was indicted occurred four years ago. Counsel notes that, at Respondent's arraignment in his criminal matter, the prosecutor advised the court that Respondent had moved to a different company, and there was no allegation of fraudulent activity by Respondent in his new employ. Counsel argues that the fact an Article 3 judge did not debar Respondent from continuing to work in the mortgage industry is proof that he is no threat to the public interest; thus, Respondent's suspension is not necessary.

Findings of Fact

1. At all relevant times, Respondent was a loan officer for a HUD-approved Direct Endorsement lender.
2. Respondent engaged in a fraudulent scheme with others to purchase residential properties.
3. The proceeds from the closings on these properties were shared among Respondent and others.
4. Some of the FHA-insured mortgages on properties involved in the scheme went into default and foreclosure within months of settlement.
5. Respondent executed the fraudulent scheme over an eight-month period.
6. Respondent was indicted for conspiracy to commit wire fraud.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent is subject to the suspension regulations because, as the loan officer of an FHA-approved lender, he “has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction.” 2 C.F.R. § 180.120.
2. Respondent was a “participant,” defined as “any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.” 2 C.F.R. § 180.980.
3. In submitting applications for, and approving and closing, HUD-insured loans, Respondent submitted proposals for covered transactions.
4. A “covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part.” *See* 2 C.F.R. 180.200.
5. Respondent also was a “principal” as he was a loan officer, thus a person who had a “critical influence on, or substantial control over a covered transaction.” 2 C.F.R. § 2424.995.
6. Respondent’s indictment for an offense involving fraud “constitutes adequate evidence” to support his suspension. 2 C.F.R. §§ 180.700 and 705(b).
7. Respondent’s misconduct compromised the integrity of the FHA mortgage insurance program and exposed it to unnecessary financial risk.
8. Respondent’s actions do not bespeak of someone who is responsible and who will act with honesty and integrity in conducting business with HUD. *See* 2 C.F.R. § 180.125.
9. Respondent’s misconduct that led to his indictment, his continuing to work in the real estate industry until his indictment, which suggests that he has the “potential business relationships” once again to become involved in mortgage loan transactions, persuade me of the necessity for “immediate action to protect the public interest.” 2 C.F.R. § 180.705(c).
10. The decisions made or not made at Respondent’s arraignment have little or no bearing in this proceeding on the determination of whether Respondent should be excluded. The issue for resolution in this proceeding is limited to determining


whether there is adequate evidence to support Respondent's suspension. As indicated above, Respondent's indictment, and the allegations set forth therein, provides the necessary quantum of evidence to warrant Respondent's suspension.

11. The regulations are clear that a suspension can be based on an indictment. Accordingly, it is of no moment that Respondent has pleaded not guilty to the charge for which he has been indicted or that he expects to be "acquitted of these charges after trial." See Letter from Respondent's attorney dated April 5, 2012.
12. The debarment and suspension regulations make no provision for staying a suspension action until the outcome of Respondent's criminal matter is final.
13. The attempted interposition of the criminal matter and the decisions reached therein has no mitigating effect in the instant matter. *See, e.g., In the Matter of Richard Wilder*, HUD ALJ 92-1766-DB (June 18, 1992. *See generally* 2 C.F.R. § 180.735(a)(1), (2), and (3)...
14. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
15. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

Determination

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to affirm and continue the suspension of JOHN ZIZZO from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government. The suspension is "effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 8/8/12


Craig T. Clemmensen
Suspending Official
Departmental Enforcement Center

CERTIFICATE OF SERVICE

I hereby certify that on this 8TH day of August 2012, a true copy of the
SUSPENDING OFFICIAL'S DETERMINATION was served in the manner indicated.



Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center

HAND-CARRIED

Mortimer F. Coward, Esq.
Suspending Official's Designee

Joseph J. Kim, Esq.
Melissa Silverman, Esq.
Ana I. Fabregas, Esq.
Government Counsel

CERTIFIED MAIL and EMAIL

Glenn A. Obedin, Esq.
Naiburg, Obedin & Weissman, LLP
The Courthouse Corporate Center, Suite 2500
320 Carleton Avenue
Central Islip, NY 11722

NOWLAW@LIVE.com

CERTIFIED MAIL

Mr. John Zizzo

